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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/970,076	10/03/2001	John A.T. Young	960296.97745	9060

7590 10/06/2004

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EXAMINER

MINNIFIELD, NITA M

ART UNIT

PAPER NUMBER

1645

DATE MAILED: 10/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/970,076	YOUNG ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	N. M. Minnifield	1645	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 05 April 2004.
- 2a) This action is **FINAL**.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 5,6,11-13 and 19-26 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 5,6,11-13 and 19-26 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) All    b) Some \* c) None of:
      1. Certified copies of the priority documents have been received.
      2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
      3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Amendment***

1. Applicants' amendment filed April 5, 2004 is acknowledged and has been entered. Claims 1-4, 7-10 and 14-18 have been canceled. Claims 5, 6 and 19 have been amended. New claims 33-36 have been added. Claims 5, 6, 11-13 and 19-26 are now pending in the present application. All rejections have been withdrawn in view of Applicants' amendment and/or comments with the exception of those rejections discussed below.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 5, 6, 11-13 and 19-26 are rejected under 35 U.S.C. 102(e) as being anticipated by Tang et al 6569662.

Tang et al discloses the polynucleotide sequence that encodes the polypeptide that comprises a fragment of SEQ ID NO: 2, 6 8 and 10, see SEQ ID NO: 8 of Tang et al 6569662. Tang et al also discloses methods of producing a protein, vectors and host cells (see cols. 2-3; cols. 9-19).

The prior art anticipates the claimed invention. The prior art anticipates the claimed invention by disclosing the polynucleotide having the same or similar characteristics as claimed. The polynucleotide in the prior art is believed to inherently possess properties which anticipates the claimed invention or if they are not the same the polynucleotide, would none the less render the claims obvious because it possesses similar characteristics and functions in the same manner as

claimed in the instant application. Thus, the polynucleotide of the prior art is evidenced to meet the limitations of the claimed polynucleotide, in the absence of evidence to the contrary.

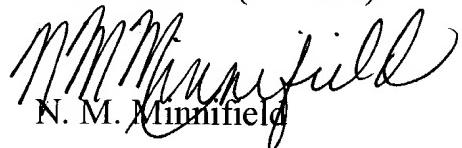
Since the Office does not have the facilities for examining and comparing applicants' polynucleotide with the polynucleotide of the prior art, the burden is on applicant to show a novel or unobvious differences between the claimed product and the product of the prior art (i.e., that the polynucleotide of the prior art does not possess the same material structural and functional characteristics of the claimed polynucleotide) See In re Best, 562 F.2d 1252, 195 USPQ 430 (CCPA 1977) and In re Fitzgerald et al., 205 USPQ 594.

4. No claims are allowed.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to N. M. Minnifield whose telephone number is 571-272-0860. The examiner can normally be reached on M-F (8:00-5:30) Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette R.F. Smith can be reached on 571-272-0864. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



N. M. Minnfield

Primary Examiner

Art Unit 1645

NMM

October 4, 2004